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Permanent Forum on Indigenous Issues
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Draft report

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Chapter I
Matters calling for action by the Economic and Social Council or brought to its attention

B. Matters brought to the attention of the Economic and Social Council

Follow-up to the recommendations of the Permanent Forum on economic and social development, environment and free, prior and informed consent

Economic and social development

1. The Permanent Forum on Indigenous Issues has received information on the implementation of 62 of the 131 recommendations made throughout its past nine sessions in the field of economic and social development, which is one of the six areas that the Forum is mandated to address. These recommendations cover a range of issues, including large-scale development projects, resource extraction, communication, traditional livelihoods, data disaggregation and the development of indicators. The Permanent Forum has consistently upheld the right of indigenous peoples to self-determination, as well as their right to determine and develop their own priorities and strategies for development, as enshrined in articles 3 and 32, respectively, of the United Nations Declaration on the Rights of Indigenous Peoples. Indigenous women play an integral role in all aspects of economic and social development, and, in order for indigenous peoples to advance the effective implementation of the Declaration, violence against indigenous women must be eradicated.

2. The Permanent Forum requests that its secretariat prepare a report on the implementation of the recommendations made, to be submitted to the Forum at its eleventh session, in 2012. The report should analyse the challenges as well as the associated factors that United Nations agencies and funds, Member States and indigenous peoples' organizations have faced.

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3. The Permanent Forum congratulates the Food and Agriculture Organization of the United Nations (FAO) on the adoption of its policy on indigenous and tribal peoples and requests that FAO take measures towards the implementation of the policy at all levels, especially the country level. Such measures include improving the capacity of FAO staff to work effectively with indigenous peoples and their organizations and establishing a mechanism for partnership. Further, the Permanent Forum requests that FAO involve the Forum in the development of the voluntary guidelines on the responsible governance of tenure of land, fisheries and forests. In addition, the Forum requests to participate in the Committee on World Food Security and to gain membership in the Committee's advisory group.

4. The Permanent Forum congratulates the International Fund for Agricultural Development (IFAD) on the establishment of an indigenous peoples' forum on 18 February 2011. This is consistent with international standards and, in particular, with the United Nations Declaration on the Rights of Indigenous Peoples. It is also an example of good practice to be followed by other United Nations entities. The Forum encourages IFAD to: (a) actively promote the participation of indigenous peoples' organizations in country strategies and programme cycles; (b) improve the design, monitoring and evaluation of IFAD-funded projects by using specific indicators for the well-being of indigenous peoples, and by promoting an independent assessment of such projects by indigenous peoples; and (c) improving its advocacy role in disseminating its best practices in terms of development approaches with indigenous peoples at the national, regional and international levels.

5. The Permanent Forum welcomes the report of the technical expert meeting on indicators, mechanisms and data for assessing the implementation of indigenous peoples' rights, held in Geneva in September 2010 by the International Labour Organization (ILO), the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the secretariat of the Forum. The report sets out important principles and guidance for further work. The Permanent Forum recommends that the Inter-Agency Support Group on Indigenous Peoples' Issues and, in particular, ILO, OHCHR and the Forum secretariat continue their work to develop a common framework for monitoring the situation and well-being of indigenous peoples and the implementation of the Declaration, including the identification of indigenous-appropriate indicators, possible data sources and linkages to relevant mechanisms. The process should be taken forward in a collaborative manner with other interested institutions, ensuring full consultation and participation of indigenous peoples.

6. The Permanent Forum requests that Paimaneh Hasteh and Kanyinke Sena, members of the Permanent Forum, conduct a study on engaging indigenous peoples more inclusively in the process of disaster risk reduction by respecting linguistic and cultural practices of indigenous peoples known to be at risk, to be submitted to the Permanent Forum at its twelfth session, in 2013.

7. The Permanent Forum recommends that the Inter-Agency Support Group compile a database on case studies showing the progress made by Member States and organizations regarding indigenous youth rights in the implementation of the Declaration.

Environment

8. The environment is one of the six substantive areas that the Permanent Forum is mandated to address, and covers a range of issues, including land rights, land use, natural resources, water, oceans, wetlands, fishing, climate change, forests, desertification, pollution, traditional knowledge and access- and benefit-sharing. Environmental issues are also incorporated into a number of articles of the United Nations Declaration on the Rights of Indigenous Peoples, specifically in relation to lands, territories and resources. Articles 25 to 32 outline the rights of indigenous peoples in relation to maintaining and strengthening their spiritual relationship with lands, territories and resources, including the right to own, develop and control their lands, to conserve and protect the environment and the production capacity of lands, to determine development on their lands and to maintain, control, protect and develop their cultural heritage and traditional knowledge and knowledge of the properties of fauna and flora.

9. The Permanent Forum endorses the report and recommendations of the International Expert Group Meeting on Indigenous Peoples and Forests (see E/C.19/2011/5) and reiterates the two recommendations set out below.

10. States should recognize indigenous peoples' rights to forests and should review and amend laws that are not consistent with the United Nations Declaration on the Rights of Indigenous Peoples and other international standards on indigenous peoples' land and natural resource rights, including over forests. This includes indigenous peoples' customary law on land and resource rights and the right to be fully involved in decision-making processes.

11. OHCHR, the secretariat of the Permanent Forum, ILO, the World Bank Group and other relevant United Nations entities, including United Nations country teams, should focus on increasing the understanding of indigenous peoples' underlying material rights to land and the need to give material rights priority over process rights. These agencies should undertake analytical work on how the intensity and exclusivity criteria that are commonly encompassed in domestic property rights systems could be understood in the context of international human rights standards related to indigenous property rights.

12. The Permanent Forum calls upon the United Nations Framework Convention on Climate Change and States parties thereto to develop mechanisms to promote the participation of indigenous peoples in all aspects of the international dialogue on climate change.

13. The Permanent Forum welcomes the adoption of the Code of Ethical Conduct to Ensure Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities Relevant to the Conservation and Sustainable Use of Biological Diversity (the *Tkarihwaié:ri* code of ethical conduct), which arose from a Forum recommendation made at its second session, and invites parties and Governments, international agencies and all those working with indigenous communities to make use of the code for research, access to, use, exchange and management of information concerning traditional knowledge.

14. The Permanent Forum welcomes the adoption by the Conference of the Parties to the Convention on Biological Diversity of two additional indicators for traditional knowledge — (a) status and trends in land-use change and land tenure in the traditional territories of indigenous and local communities, and (b) status and trends

in the practice of traditional occupations — to complement the adopted indicator on status and trends in traditional languages. The Forum urges the secretariat of the Convention and agencies working on these issues, including the United Nations Educational, Scientific and Cultural Organization (UNESCO), ILO, FAO, IFAD and the International Land Coalition, to collaborate with a view to fully operationalizing those indicators.

15. The Permanent Forum has decided to appoint Kanyinke Sena and Bertie Xavier to conduct an assessment/report/study on indigenous peoples' rights and safeguards in projects related to reducing emissions from deforestation and forest degradation (REDD+) and to report back to the Permanent Forum at its twelfth session, in 2013.

16. Numerous indigenous representatives have raised region-specific concerns about the adverse impacts of climate change on their communities. Therefore, the Permanent Forum will explore the potential for the conduct by appropriate United Nations entities of assessments, studies and reviews of the economic, social and cultural impacts of climate change on indigenous nations, peoples and communities. For example, the secretariat of the Convention to Combat Desertification could conduct a study on climate change and desertification in the African region.

17. The Permanent Forum recognizes the right to participate in decision-making and the importance of mechanisms and procedures for the full and effective participation of indigenous peoples in relation to article 18 of the United Nations Declaration on the Rights of Indigenous Peoples. The Forum reiterates that the United Nations Framework Convention on Climate Change, the Stockholm Convention on Persistent Organic Pollutants, the Convention on Biological Diversity, the World Intellectual Property Organization and the International Maritime Organization should facilitate indigenous peoples' participation in their processes.

18. The Permanent Forum notes the information reported to the Arctic Council ministerial meeting held in Nuuk in May 2011 on the impact of the cumulative effects of climate change and industrial development in the Arctic, and has decided to appoint Anna Naykanchina, a member of the Permanent Forum, to undertake a study on the impacts of land-use change and climate change on indigenous reindeer herders' livelihoods and land management, including culturally adjusted criteria for indigenous land uses, to be presented to the Permanent Forum at its eleventh session, in 2012.

Free, prior and informed consent

19. The common understanding of the right of free, prior and informed consent is that consent should be: given freely, without coercion, intimidation or manipulation (free); sought sufficiently at all stages, including from inception to final authorization and implementation of activities (prior); based on an understanding of the full range of issues and implications entailed by the activity or decision in question (informed); and given by the legitimate representatives of the indigenous peoples concerned.

20. Free, prior and informed consent has been explicitly affirmed in the United Nations Declaration on the Rights of Indigenous Peoples in relation to the relocation of indigenous peoples from their lands and territories (article 10); redress with

respect to the appropriation of their cultural, intellectual, religious and spiritual property (article 11, para. 2); obtaining such consent before adopting and implementing legislative and administrative measures that may affect indigenous peoples (article 19); redress for their lands or resources taken without their consent (article 28, para. 1); disposal of hazardous materials in their territories (article 29, para. 2); and obtaining of such consent prior to the approval of development projects affecting their lands or territories and other resources (article 32, para. 2).

21. As a crucial dimension of the right of self-determination, the right of indigenous peoples to free, prior and informed consent is also relevant to a wide range of circumstances in addition to those referred to in the United Nations Declaration on the Rights of Indigenous Peoples. Such consent is vital for the full realization of the rights of indigenous peoples and must be interpreted and understood in accordance with contemporary international human rights law, and recognized as a legally binding treaty obligation where States have concluded treaties, agreements and other constructive arrangements with indigenous peoples. In this regard, the Permanent Forum emphatically rejects any attempt to undermine the right of indigenous peoples to free, prior and informed consent. Furthermore, the Forum affirms that the right of indigenous peoples to such consent can never be replaced by or undermined through the notion of "consultation".

22. Given that the right of indigenous peoples to free, prior and informed consent is recognized and affirmed in the United Nations Declaration on the Rights of Indigenous Peoples, questions have arisen concerning its implementation. In the light of such fundamental concerns, the Permanent Forum has decided to prioritize free, prior and informed consent. Therefore, in the context of future work, the Permanent Forum will explore the potential for the development of guidelines on the implementation of free, prior and informed consent. The Permanent Forum will endeavour to do so in collaboration with the Expert Mechanism on the Rights of Indigenous Peoples and the Special Rapporteur on the rights of indigenous peoples, who are specifically mandated to address the human rights of indigenous peoples. This initiative, as well as those referred to immediately below, are fully consistent with articles 38, 41 and 42 of the United Nations Declaration on the Rights of Indigenous Peoples.

23. The Permanent Forum also notes the number of interventions by indigenous peoples alarmed at the denial of their right to free, prior and informed consent in relation to extractive industries and other forms of large- and small-scale development. Therefore, the Permanent Forum recommends that States and international financial and aid institutions systematically monitor, evaluate, assess and report on how free, prior and informed consent has or has not been recognized and applied with respect to the lands, territories and resources of the indigenous peoples concerned.

24. Given the importance of the full range of the human rights of indigenous peoples, including traditional knowledge, culturally appropriate procedures to ensure communication, information, and scheduling, the Permanent Forum calls on all United Nations agencies and intergovernmental agencies to implement policies, procedures and mechanisms that ensure the right of indigenous peoples to free, prior and informed consent consistent with their right to self-determination as reflected in common article 1 of the International Covenants, which makes reference to permanent sovereignty over natural resources.

25. The Permanent Forum urges the World Heritage Committee to defer all nominations of sites in indigenous territories if it cannot be ensured that the indigenous peoples concerned have been adequately consulted and involved and that their free, prior and informed consent has been obtained. The designation of World Heritage Sites must adhere to the principles of free, prior and informed consent and should not adversely compromise the ability of indigenous peoples to carry out subsistence activities such as cultivation, fishing and hunting as well as their ability to freely pursue their economic, social and cultural development. The Permanent Forum calls on the World Heritage Committee to revise its operational guidelines in order to ensure that the implementation of the World Heritage Convention is fully consistent with the United Nations Declaration on the Rights of Indigenous Peoples, and requests that the Committee convene a working group of experts on indigenous issues for that purpose.